

Pokémon Go's Popularity, Technology Creating New Legal Issues

Pokémon Go is one of the first augmented reality games to achieve widespread popularity. That popularity has exacerbated minor problems that have blossomed into serious issues on the larger scale. A comparison between Pokémon Go and its predecessor, Ingress, provides an example of how augmented reality on a large scale can create unique legal problems.

Pokémon Go players download an app on their mobile device which overlays in-game locations on real-world landmarks. Players then catch Pokémon (virtual in-game creatures) while they travel with their mobile device. Pokémon Go uses its collection of geolocation data to associate in-game locations with real world places and landmarks, where players can get items to aid them.

While it has only been two months since Pokémon Go's release, its mechanics and location data for the in-game landmarks are shared with its predecessor, Ingress. Ingress was made by the same team as Pokémon Go, now known as Niantic, and used the location information to set up in-game locations called "portals" that players would attempt to capture and control. Initially, the game developers took submissions from users to identify common landmarks and locations for use in the game. These locations were also used for Pokémon Go with rebranding based on the popular intellectual property licensed from The Pokémon Company.

Both Ingress and Pokémon Go use the location data, but only the far more popular Pokémon Go has attracted complaints. Arlington National Cemetery and the National Holocaust Museum have protested the placement of in-game locations in their establishments. There have also been potential security and safety issues, with hospitals, police stations, and the Department of Defense asking players to stay out of certain areas while playing.

While Pokémon Go's in-game locations should only be located on publicly accessible areas, they have also been associated with private residences and homes. This can result in interested players, either inadvertently or purposefully, trespassing in order to access a particular in-game location. When it is only a handful of players, as it was with Ingress, it may not even be noticeable.

But with millions of users playing Pokémon Go on a regular basis, it can become a serious problem for homeowners who happen to have an in-game location in their back yard.

The increased scale has attracted putative class action lawsuits filed against Niantic, Inc. for the property tort of nuisance. This is an unusual development for a long standing doctrine of real property. Typically nuisance involves something that is very local and specialized, or involves a single community. Here, the complaints argue that associating in game locations on private property has attracted trespassers, preventing its quiet use and enjoyment. While a nuisance suit is typically limited to a geographic locale, the widespread use of Pokémon Go has created common complaints that attempt to assert nationwide classes of property owners for Niantic's app.

While these cases have yet to advance beyond the pleading stage, the combination of a well-known defendant with a popular product has transformed what was a minor cost of doing business to something that has serious legal ramifications. Courts may struggle to address these unique issues not only of augmented reality in general, but of the increased scale of user participation as society adopts new technology in greater numbers.

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